

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KRISTEN BURKE

Plaintiff, ECF Case
Civ No. 07-3732 (GBD)

-against-

DANIEL RODRIGUEZ

Defendant.

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Counsel for the parties have conferred pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure. During the conference, counsel for defendant objected to the exchange of initial disclosures at this stage, pursuant to Fed. R. Civ. P. 26(a)(1). After consultation, the parties cannot agree on dates for a case management plan and respectfully submit both sides proposals herein:

Counsel for Plaintiff proposes as follows:

Plaintiff is prepared to comply with the discovery schedule set forth by the Court's May 17, 2007 Order.

To the extent that defendant resists discovery because of a pending motion, defendant's motion seeks no relief pursuant to Rule 26(c). Therefore there exists no basis for defendant to refuse to engage in discovery regardless of the filing of the Rule 12(b)(6) motion. *See, In re Chase Manhattan Corp. Sec. Litig.*, 1991 WL 79342 (SDNY [McKenna,J]). Next, defense counsel has represented that defendant shall not even comply with pre-discovery disclosure as required by Rule 26 (a)(1) . Defendant must comply with the Rule absent an express Order from the Court. Plaintiff submits there is no basis for non-compliance with the Required Disclosures Rule. Plaintiff is prepared to comply with the Rule and requests that defendant be Ordered to do so. Finally, the Court previously quashed a subpoena served on non-party Morgan Stanley because the subpoena was served prior to counsels' Rule 26(f) conference. Now that counsel have conferred, plaintiff wishes to reissue the subpoena to obtain emails between the parties and other relevant documents which are solely in the possession of the non-party employer Morgan Stanley. Such documents shall provide ample support for each of plaintiff's causes of action.

Counsel for Defendant proposes as follows:

The defendant having moved pre-answer to dismiss the plaintiff's complaint and opposition papers have not yet been received, the motion has not yet been fully submitted

and issue has not yet been joined; and the disposition of the motion having the potential for serving the interests of economy obviating the discovery or limiting the scope of permissible discovery in this action; and the plaintiff having not shown any prejudice from a stay of discovery until issue is (if at all) joined;

IT IS ORDERED that pursuant to Fed.R.Civ.P. 26(a)(1) initial disclosures are not required to be made at this stage. The parties shall confer pursuant to Fed.R.Civ.P. 26(f) within seven (7) days after issue may be joined, and shall submit a proposed Civil Case Management Plan and Scheduling Order within three days of the conference.

Dated: July 27, 2007

SO ORDERED:

GEORGE B. DANIELS
United States District Judge

/s/ Andrew Laskin (AL 9379)

Attorney for Plaintiff

/s/ Alisa Silverstein (AS 2926)
Attorney for Defendant